



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR98-2980

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120119.

The Texas Workers' Compensation Commission (the "commission") received a request for 1) a copy of the outpatient claims in the commission's database and 2) the identification numbers for inpatient claims or randomly generated substitute identification numbers. You contend that the database of outpatient claims is excepted from disclosure pursuant to section 552.103 of the Government Code. You contend that the identification numbers for inpatient claims are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. You argue that the commission is not required to create substitute identification numbers for the requestor.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this

burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The commission must meet both prongs of this test for information to be excepted under 552.103(a).

The commission is a party to pending litigation. *Texas Hosp. Ass'n v. Texas Workers' Compensation Comm'n & Brown*, No. 97-08791 (345th Dist. Ct., Travis Co., Tex.). Having considered your arguments and the plaintiff's first amended original petition, we agree that the database of outpatient claims is related to the pending litigation. Therefore, we conclude that the commission may withhold this information from disclosure under section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party in the litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Section 402.083(a) of the Labor Code provides:

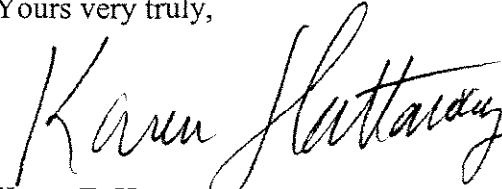
(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

In Open Records Decision No. 619 (1993), this office concluded that this section protects only information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing a worker's compensation claim. You state that the requestor is not one of the parties entitled to receive claim file information pursuant to section 402.084 of the Labor Code. After reviewing your arguments, we conclude that the identification numbers for inpatient claims are protected from disclosure under section 552.101 in conjunction with section 402.083(a) of the Labor Code.

Finally, with regard to the request that the commission create substitute identification numbers, we note that the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information in response to a request. Open Records Decision Nos. 605 (1992), 572 (1990), 534 (1989). Thus, the commission is not required to provide the requestor with randomly generated substitute identification numbers.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 120119

Enclosures: Submitted documents

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(w/o enclosures)